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IN THE

Supreme Court of the United States

October Term, 1968
No. 988

HOTEL AND RESTAURANT EMPLOYEES UNION LOCAL NO. 556, ERNEST LEGATO, KENNETH EVERHART, JULIUS KARLAKOFSKI, and HAROLD KENSINGER, International Representative and Trustee, as individuals,

Appellants,

vs.

DANIEL EMERY and MILEDA EMERY, d/b/a THE MAIN DINER,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF OPPOSING JURISDICTION AND MOTION TO DISMISS APPEAL OF THE APPELLANTS TO THE UNITED STATES SUPREME COURT

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STATEMENT OPPOSING JURISDICTION

The Supreme Court of the United States does not have jurisdiction to review the order complained of by direct appeal pursuant to the provisions of 28 U.S.C. § 1257(2) as there is not drawn into question the validity of a statute of the State of Minnesota as being repugnant to the Constitution of the United States. The appellants are merely attempting by this appeal to have the Supreme Court of the United States revise, reinterpret, and review the Minnesota Supreme Court's decision of the facts, evidence and the Minnesota Supreme Court's own interpretation of its state's statutes and public policy which rests upon an adequate state ground.

The appeal should be dismissed for the further reason that the subject-matter of the controversy is not inherently federal, and the only alleged federal question raised has been so explicitly foreclosed by prior decisions as to afford no basis for a writ of certiorari or any appeal. *Hughes v. Superior Court*, 339 U.S. 460; *International Brotherhood of Teamsters v. Hanke*, 339 U.S. 470; *Building Service Employees Union v. Gazzam*, 339 U.S. 532.

STATEMENT OF THE CASE

The plaintiffs Daniel C. Emery and Mileda Emery purchased the Main Diner in March of 1961. (R. 18, f. 2) At that time he had a part-time employee, Irma Yanish. The restaurant was small and had a seating capacity for only 23 or 24 persons. (R. 19, f. 3) That Mr. Emery advanced Irma Yanish the money to join the union when the defendant Legato contacted him (R. 20, f. 1). Mrs. Emery was a waitress at the Manor and belonged to the union and helped her husband out

at the Main Diner in her off hours. (R. 20, f. 2) That Irma Yanish left her employ at the Main Diner in December of 1962. (R. 21, f. 1; R. 49, f. 2) That acting upon the defendant Legato's advice, Mrs. Emery took a withdrawal card from the union, because she explained she would be with her husband as a manager or employer. (R. 20, f. 3) In February 1963, the defendant Legato contacted Mrs. Emery at the Main Diner about her or her husband joining the union and they refused. Mr. Emery stated that he and his wife were owners and operators would not join the union. (R. 21, f. 3)

Then Mr. Emery next received a notice that he should appear before the Labor Conciliator and he did so appear. (R. 22, f. 2)

The defendant Kensinger told Mr. Emery he would be put out of business unless he joined the union. But Mr. Emery still refused to join the union. (R. 23, f. 1)

Then sometime toward the end of June the defendant Legato contacted Mr. Emery at the Main Diner to join the union. Mr. Emery stated he would not join, and that he didn't know which one was the employer or the employee, and that they were just owners and they did not want to join. (R. 23, ff. 2, 3)

That shortly thereafter, about June 1, a picket was placed in front of the restaurant and the defendant Legato was instructing him as to what to do. (R. 24, f. 1) The picket carried a sign or banner and would stand in front of the door to the restaurant. (R. 24, f. 3; R. 25, f. 2)

Mr. Emery was told that the picket would be removed if either he or his wife joined the union. (R. 27, f. 1) That after the picket was placed in front of the restaurant their business was reduced by over one-half. (R. 29, f. 3)

That only Mr. and Mrs. Emery operated the restaurant and they didn't have any employees. (R. 29, f. 3; R. 30, f. 1)

That on October 24, 1963, Mr. Emery saw the defendant Legato and others stopping his customers in front of the restaurant and the customers were turned away and did not come into the restaurant. (R. 30) That when Mr. Emery called the police, the union organizers disappeared. (R. 32, f. 3)

Mr. Emery testified the picketing continued into 1964. (R. 33, f. 1) That he had several realtors try to sell the restaurant, but they were unsuccessful. (R. 34, f. 1)

Mr. Emery testified that he and his wife put in over 12 hours a day working in their restaurant, and this would be for 6–7 days of the week. (R. 38, f. 3)

Mr. Emery further stated that he replaced quite a bit of the restaurant equipment (R. 45, f. 2), and that he and his wife commenced a program of hot meals like you would have at home. (R. 46, f. 2)

Mr. Emery further testified that as a result of the picketing of the restaurant by the union the best offer Mr. Emery could obtain was under a contract basis where he received only $300 down and payments of $75.00 per month were to be made until the balance was paid off. (R. 36, f. 3) That the restaurant was sold on July 1, 1964, to Vernon Fleming for $5,000, but the purchaser made only one monthly payment of $75.00 and then left town and never made any further payments. (R. 37, f. 2) Mr. Emery stated he purchased the restaurant for $4,500 in 1961 (R. 37, f. 1) and gradually kept increasing the business and that prior to the unlawful picketing his restaurant was a successful business and worth $10,000. (R. 38, f. 2)

At the Conciliator's meetings, Mr. Emery explained that there were no employees and that he and his wife were management and would not obtain any benefits by joining the union (R. 56, f. 2), and one of the union representatives stated unless he or his wife joined the union he would be ruined and

thrown to the financial wolves. (R. 56, f. 3; R. 57, f. 1) Mr. Emery testified that after the picket appeared in June of 1963 he wrote to the Governor and to the City Council protesting the picketing. (R. 66, f. 1)

That on October 24, 1963, the union organizers talked to about 20–25 customers (R. 68, f. 2) and tapped them on the shoulders, and they then did not come into the restaurant. (R. 69, f. 1)

Mrs. Emery testified that at the time she and Dan purchased the restaurant they were engaged and that they were subsequently married. (R. 73, f. 2) Mrs. Emery testified that she was employed as a waitress at the Manor during the years 1961 and 1962 and was a member of Local 556. (R. 73, f. 2) That after working at the Manor she would come and help out her husband at the Main Diner. (R. 73, f. 3) That while Mrs. Emery was working at the Main Diner she had a conversation with the defendant Legato, who was collecting union dues from Irma Yanish, concerning the issuance of a withdrawal card from the union. (R. 74, f. 1) She explained to the defendant Legato the purpose of this withdrawal card and that she would be operating the restaurant with her husband. (R. 79, f. 2) The defendant Legato told her it was all right for her to get a withdrawal card and she was issued a withdrawal card and she paid a nominal fee for it. Mrs. Emery had stated that she would be receiving no benefits by belonging to the union, no vacation pay, no sick leave, and the defendant Legato agreed with her and issued her a withdrawal card. (R. 79, f. 3)

That in early 1963, the defendant Legato came to the Main Diner and stated that one or both of them must belong to the union. (R. 144, f. 2)

The defendant Kenneth Everhart testified that he is the President of Local 556, Hotel & Restaurant Employees Union, and prior to his coming here this union was a trusteeship administered by the international union. He testified he saw this picketing starting in June 1963 practically every day that the picket was there. (R. 85, f. 1) That the defendant Legato first contacted the picket and on his recommendation the union had hired him and paid him $1.50 per hour to picket, and the union also provided the picket sign for the picket (Julius Karlakofski) to carry. (R. 86, f. 2)

The dispute existed because the restaurant did not display a union house card and that Mr. and Mrs. Emery could obtain the union house card by either one of them joining the union, and then the picket would have been withdrawn. (R. 88, f. 2) That the picket would be picketing the Main Diner five days a week (R. 105, f. 3), and he was instructed to be there picketing at the busiest time. (R. 106, f. 1) The defendant Everhart admitted that a withdrawal card was issued to Mrs. Emery by the union (R. 105, f. 3); he also admitted writing a letter to Mr. White (Business Agent of the American Linen employees) to advise their union members not to patronize the Main Diner (R. 90, f. 1), and that a bulletin was mailed out to many local unions stating that they were not to patronize the Main Diner (R. 92, f. 3), and that these bulletins were mailed to unions that had members in close proximity to the Main Diner, like the American Linen, Roster Pontiac, and other businesses in that locale. (R. 93, f. 2)

That on October 24, 1963, the defendant Everhart met with Mr. White, the business agent of the American Linen union, and with the defendant Legato at the American Linen Co. (R. 94, 95) The defendant Legato testified that he knew employees from the American Linen Co. were going across to

the Main Diner and were ignoring the picket. (R. 146, f. 3; R. 147, f. 1)

The defendant Everhart admitted coming across the street from the American Linen Co. to the sidewalk by the Main Diner with the defendant Legato and Mr. White and talking to the employees of the American Linen Co., and the employees then did not enter the restaurant. (R. 100, f. 1)

The defendant Legato testified that he issued the withdrawal card and gave it to Mrs. Emery while she was working at the Main Diner. (R. 155, f. 2) The withdrawal card was issued in September 1961 (R. 137, f. 3, and Mrs. Emery paid a nominal fee for this withdrawal card. (R. 141, f. 1) The defendant Legato also admitted he knew and saw Mrs. Emery assisting and helping her husband at the Main Diner in the year 1962. (R. 154, f. 2)

The defendant Everhart admitted that even if Mr. or Mrs. Emery were to join their union as passive members that they would not be able to vote at any union meetings nor would they be able to even attend any union meeting to voice their views. (R. 178, f. 3; R. 179, f. 1; R. 187, f. 1) The only thing a passive member does is to pay dues.

ARGUMENT AND MOTION TO DISMISS APPEAL

The cases cited by the appellants to sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal are not applicable to the fact situation herein involved. The real issues or questions to be decided by this Court are whether or not a union can picket an employer and his spouse to compel or force one or the other to join their union when membership in said union would give them only "sterile" mem-

bership in that they as "passive" union members would be prohibited from attending union meetings, prohibited from voicing their views, and prohibited from voting on any issues that arose.

Secondly, does the Minnesota Supreme Court's decision to uphold the jury's verdict that this is an improper objective or purpose to coerce or force a self-employer or his spouse to join a union in which they would become amenable to the rules and sanctions of the union without the right to participate in the proceedings by which such rules and sanctions are passed violate any federally guaranteed rights?

The Minnesota Supreme Court's interpretation of its statutes and public policy does not violate any federally protected right. I believe that the Supreme Court of the United States does not have the jurisdiction to reinterpret and revise the Minnesota Supreme Court's interpretation of its own statutes. See *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, and *Hammerstein v. Superior Court of California*, 340 U.S. 622.

Therefore, the appellees respectfully move this Court to dismiss the appellants' appeal on the ground that it does not present a substantial federal question and that the judgment of the Minnesota Supreme Court rests upon an adequate non-federal basis.

Respectfully submitted,

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